

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

In Re: ADC Telecommunications, Inc.  
ERISA Litigation,

Relates To All Actions

MBD No. 05-10307-RGS

Master File No. 03-2989 ADM/FLN  
United States District Court  
District of Minnesota

**PLAINTIFF'S MOTION TO QUASH SUBPOENA DUCES TECUM**

Plaintiff James A. Carnahan ("Movant"), on behalf of himself and a class of all others similarly situated, respectfully requests that this Court quash the subpoena served upon Steven P. Feinstein ("Feinstein"), pursuant to Federal Rules of Civil Procedure 45(c)(3)(A).

In support of this motion, Movant states as follows:

1. Movant filed an Amended Consolidated Class Action Complaint ("Complaint") against ADC Telecommunications, Inc. ("ADC" or the "Company"), its Board of Directors and other officers of the Company in the United States District Court for the District of Minnesota on January 25, 2005 for alleged violations of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132 with respect to management and administration of the ADC Telecommunications, Inc. Retirement Savings Plan (the "Plan").

2. On March 15, 2005, the Honorable Franklin L. Noel, signed an Amended Pretrial Order setting October 1, 2005 as the deadline for all discovery to be completed, with the exception of expert depositions, which are to be completed by November 1, 2005. This matter is expected to be ready for trial by February 1, 2006.

3. Pursuant to Judge Noel's Pretrial Order, Plaintiff identified his expert witnesses on July 1, 2005.

4. On July 26, 2005, Dorsey & Whitney, LLP, counsel for Defendants, served a

subpoena *duces tecum* on Feinstein, one of Plaintiff's experts. A true and correct copy of the subpoena is attached as Exhibit "A" to the accompanying Memorandum of Law (the "Subpoena").

5. Movant brings this motion to quash as the Subpoena is invalid. First, the Subpoena fails to specify a place for responding thereto as required by Fed. R. Civ. P. 45(a)(1)(C) and Fed. R. Civ. P. 45(c)(3)(A)(ii). Second, Defendants are seeking to circumvent Federal Rules of Civil Procedure Nos. 26, 30 and 34, which provide the proper procedures for obtaining documents and other material from a party's experts. *See Alper v. United States of America*, 190 F.R.D. 281 (D. Mass. 2000); *Perry v. United States*, 1997 U.S. Dist. LEXIS 23875, \*4 (N.D. Tex. Feb. 4, 1997). Thus, the Subpoena is invalid on its face.

6. Additionally, notwithstanding the invalidity of the Subpoena, Movant asserts that a privilege exists with respect to the subpoenaed material of its expert. More specifically, the Subpoena seeks information that is protected by the attorney work-product privilege. It is firmly established that it is within a court's power to quash a subpoena that "requires disclosure of privileged or other protected matter." *See, e.g., United States of America v. Thurston Bell*, 2002 U.S. Dist. LEXIS 14470, (M.D. Pa. June 13, 2002).

7. The Subpoena also seeks documents that would be unduly burdensome for Feinstein to produce and can just as easily be obtained by Defendants.

8. Finally, "[m]any courts have routinely considered, without discussion of standing, a party's motions to quash subpoenas *duces tecum* addressed to that party's expert witnesses." *Smith v. Transducer Technology, et al.*, 2000 U.S. Dist. LEXIS 17217 (D. V.I. Nov. 16, 2000).

9. For each of the above reasons, the Subpoena should be quashed.

10. Movant attaches hereto a memorandum in support of his motion and a proposed

order.

WHEREFORE, Movant respectfully requests this Court to grant his motion and enter an order in substantially the form submitted.

Dated: August 15, 2005

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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